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September 8, 2021

***Via Electronic Filing***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

In re: Docket No. A-2021-3024267

Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Lower Makefield Township

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Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Prehearing Conference Memorandum in connection with the Call-In Telephonic Prehearing Conference to be held on September 9, 2021. Copies of the Prehearing Conference Memorandum are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
The Honorable Jeffrey A. Watson, Administrative Law Judge (via email, w/encl.)  
Alexander R. Stahl, Esq. (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**The Honorable Jeffrey A. Watson, Presiding**

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**Application of Aqua Pennsylvania Wastewater, Inc. (hereinafter referred to as “Aqua” or “Applicant”) pursuant to Sections 1102 and 1329 of the Public Utility Code for:** : **Docket No. A-2021-3024267**  
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**(1) approval of the acquisition by Aqua of the wastewater system assets of Lower Makefield Township (“LMT” or “Township”) situated within the Township of Lower Makefield and Yardley Borough, Bucks County, Pennsylvania;** : :  
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**(2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in Lower Makefield Township, Bucks County, Pennsylvania; and** : :  
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**(3) an order approving the acquisition that includes the ratemaking rate base of the Lower Makefield Township wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code.** : :  
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**Request for Approval of Contracts, including Assignments of Contracts, between Aqua and Lower Makefield Township, Pursuant to Section 507 of the Public Utility Code** : :  
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**PREHEARING MEMORANDUM OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”) and submits this Prehearing Memorandum in connection with the Call – In Telephonic Prehearing Conference scheduled to be held in the above captioned matter on September 9, 2021.

## I. BACKGROUND

This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on May 14, 2021, for approval of its acquisition of the wastewater system assets of Lower Makefield Township pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”). The Application also includes a request for approval of contracts, including assignment of contracts, pursuant to Section 507 of the Code.

By Secretarial Letter dated June 25, 2021, the Commission, *inter alia*, conditionally accepted the Application for filing and directed Aqua to serve copies of the Application upon designated entities, to provide individualized notice to affected customers and to publish notice of the filing of the Application in a newspaper of general circulation.

Aqua complied with the requirement of the conditional acceptance letter. The Commission, thereafter, by Secretarial Letter dated August 5, 2021, informed Aqua that it accepted the Application for filing and that the matter would be assigned to the Office Administrative Law Judge for disposition.

Administrative Law Judge Jeffrey A. Watson was assigned to preside over the proceeding. A Call – In Telephone Prehearing Conference was noticed for September 9, 2021.

Judge Watson issued a Prehearing Conference Order on August 11, 2021. Paragraph 6 of the Prehearing Conference Order directs parties to file and serve a prehearing memorandum on or before 1:00 PM on September 8, 2021.

## **II. LIST OF ISSUES AND AQUA'S POSITION IN REGARD TO THEM**

There are three central issues in this Application proceeding:

### **Issue:**

Is Aqua's acquisition of the wastewater system assets of Lower Makefield Township necessary or proper for the service, accommodation, convenience or safety of the public?

### **Aqua's Position:**

Aqua's acquisition of the wastewater system assets of Lower Makefield Township is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission should issue certificate(s) of public convenience approving the acquisition.

As summarized in Section X of the Application:

- a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of Lower Makefield Township, and to maintain the operations and make improvements to meet continuing and future customer needs.<sup>1</sup> The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;
- b. Lower Makefield Township has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of Lower Makefield Township, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Lower Makefield Township system will benefit from the support of wastewater professionals throughout Aqua's organization;
- c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."<sup>2</sup> The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;

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<sup>1</sup> As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

<sup>2</sup> Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

- d. Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of the Township;
- e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 105 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) to support a conclusion that there is a public benefit to a transaction;
- f. The acquisition of the Lower Makefield Sewer system will increase Aqua's customer base by approximately 25%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and
- g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or Township customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

**Issue:**

Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the wastewater system assets of Lower Makefield Township?

**Aqua's Position:**

The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$53,000,000, being the lesser of the purchase price of \$53,000,000 negotiated by Aqua and Lower Makefield Township and the average of the fair market value appraisals (\$54,967,796) of Gannett Fleming and AUS.

**Issue:**

Pursuant to Section 507 of the Public Utility Code, are the contracts, including assignments of contracts, between Aqua and Lower Makefield Township valid?

**Aqua's Position:**

The contracts, including assignment of contracts between Aqua and Lower Makefield Township are valid under Section 507 of the Public Utility Code.

**III. WITNESSES**

The following statements of written direct testimony were attached as Exhibit U, Exhibit V, Exhibit W, Exhibit X and Exhibit Y to the Application when it was submitted to the Commission on May 14, 2021.

<b><u>Application</u></b>	<b><u>Aqua Statement</u></b>	<b><u>Witness</u></b>	<b><u>Subject Matter</u></b>
Exhibit U	Statement No. 1	William C. Packer	A General Overview of the Transaction; Financial and Legal Fitness of APW; Public Benefits of the Transaction; and Section 1329
Exhibit V	Statement No. 2	Mark J. Bubel, Sr.	Description of the System; Environmental Compliance; Integration into Current Operations; Technical Fitness; and Public Benefits of the Transaction
Exhibit W	Statement No. 3	Kurt M. Ferguson	A General Overview of the Transaction; Description of the Lower Makefield Township; the Township's Sale Process; Benefits of the Proposed Transaction; and Township Rates
Exhibit X	Statement No. 4	Harold Walker, III	Gannett Fleming Fair Market Value Appraisal
Exhibit Y	Statement No. 5	Jerome C. Weinert	AUS Fair Market Value Appraisal

Aqua also may call as a witness Frederick Ebert, P.E., to address the Engineer's Asset Inventory. Mr. Ebert's address and telephone number are as follows:

Frederick Ebert, P.E.  
Ebert Engineering, Inc.  
4397 Skippack Pike  
Skippack, PA 19474  
(610) 584-6701

Aqua requests that any contact with witnesses be arranged through Counsel.

Aqua also will submit its Application as an Exhibit in support of Commission approval of the proposed acquisition and the proposed ratemaking rate base. The items listed in Section 1329(d) of the Public Utility Code, including fair market value appraisals of Gannett Fleming, Utility Valuation Expert, and AUS, Utility Valuation Expert, were attached to the Section 1102 Application in accordance with Section 1329(d) when the Application was submitted to the Commission.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify Administrative Law Judge Watson and the parties promptly should Aqua determine that additional witnesses will be called.

#### **IV. LITIGATION SCHEDULE**

Aqua, Lower Makefield Township, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate propose the following litigation schedule reflective of the schedule presented in Paragraph 5 of the Prehearing Conference Order with limited modifications:

Prehearing conference	September 9, 2021
Direct testimony of other parties	September 10, 2021
Rebuttal testimony	September 17, 2021
Surrebuttal testimony	September 24, 2021
Rejoinder outlines	September 28, 2021
Evidentiary hearings (with oral rejoinder)	September 29-30, 2021

Receipt of transcript	October 1, 2021
Main Briefs	October 8, 2021
Reply Briefs	October 18, 2021
Recommended Decision	November 22, 2021
Exceptions	December 3, 2021
Replies to Exceptions	December 13, 2021
Public meeting	January 13, 2022

**V. SETTLEMENT**

Aqua is willing to address settlement of all or part of the proceeding with the other parties.

**VI. PROTECTIVE ORDER**

Information marked CONFIDENTIAL was provided with the Application. Aqua filed a Petition for Protective Order on August 18, 2021. There was no objection to the Petition from the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate or Lower Makefield Township. Judge Watson issued an Order Granting Petition for Protective Order, dated September 3, 2021.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By

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*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: September 8, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**The Honorable Jeffrey A. Watson, Presiding**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this 8<sup>th</sup> day of September, 2021, served a true and correct copy of the foregoing Prehearing Memorandum of Aqua Pennsylvania Wastewater, Inc., upon the persons and in the manner set forth below:

**VIA ELECTRONIC MAIL, BEFORE 1 PM**

The Honorable Jeffrey A. Watson  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
jeffwatson@pa.gov

Erika L. McLain, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
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